

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LUKE STEWART,)	
ROGER BAILEY, and)	
BUNRATH MATH,)	Civil Action No.
individually, and on behalf of)	
all others similarly situated,)	<u>CLASS ACTION COMPLAINT</u>
)	
)	
Plaintiffs,)	Jury Trial Demanded
)	
vs.)	
)	
SAMSUNG ELECTRONICS)	
AMERICA, INC.,)	
Defendant.)	
_____)	

CLASS ACTION COMPLAINT

Plaintiffs Luke Stewart, Roger Bailey, and Bunrath Math (together, “Plaintiffs”) individually and on behalf of all others similarly situated, by their undersigned counsel, allege the following upon personal knowledge as to their own acts and upon information and belief as to all other matters. Plaintiffs’ information and belief is based upon the investigation conducted by counsel.

NATURE OF THE ACTION

1. Plaintiffs bring this action against Samsung Electronics America, Inc. (“Defendant” or “Samsung”) on their own behalf and as a class action on behalf of all others who purchased a new plasma, liquid

crystal display (“LCD”), or digital light processing (“DLP”) television manufactured, distributed or sold by Samsung under the Samsung brand name (the “Samsung Televisions”) in the United States on or after October 1, 2004 through the date upon which Defendant ceases the conduct complained about herein (the “Class Period”) whose Television suffers from the design defect described herein (hereinafter the “Class”). Any claims that Plaintiffs or any member of the Class may have against Defendant for personal injuries are expressly excluded from this action.

2. Plaintiffs and the other Class members spent anywhere from \$250 to \$3,800 on Samsung Televisions. Long before the Samsung Televisions are expected to fail, however -- and often shortly after the one year labor and parts warranty that accompanies the Samsung Televisions expires -- Class members’ Samsung Televisions start to emit a clicking noise for several minutes and fail to turn on when prompted. Then the Samsung Televisions also begin to shut off without prompt during normal operation. Not long after these symptoms arise, the Samsung Televisions either do not turn on at all, or shut down so frequently that the Samsung Televisions are essentially useless.

3. Plaintiffs and the other Class Members were unaware when they purchased the Samsung Televisions that the Samsung Televisions suffer

from a design defect that inevitably results in their power supply boards failing and the Samsung Televisions turning off and /or failing to turn on (the “TV Problem”).

4. Samsung defectively designed the Samsung Televisions because the capacitors on the power supply boards are not equipped to handle the amount of heat and/or electricity that flows through the Samsung Televisions during normal operation. This usual and expected electrical flow causes the power supply boards to malfunction and, in turn, causes the Samsung Televisions to become inoperable.

5. Samsung has known about this problem since at least 2004 as a result of an avalanche of consumer complaints posted on the internet, articles available throughout the industry, and complaints taken at Samsung’s consumer call centers. Upon information and belief, Samsung also knew about the TV Problem as a result of its design and testing of the Samsung Televisions.

6. Indeed, Samsung has admitted to knowledge of the design defect through the issuance of a limited silent recall with respect to some of the Samsung Televisions. In certain instances where consumers have complained repeatedly about their defective Samsung Televisions, Samsung

has offered to repair certain Samsung Televisions that suffered from the TV Problem even if the Television was out-of-warranty.

7. Despite its knowledge of the TV Problem, Samsung has failed to inform Plaintiffs and other members of the Class of the existence of the fatal design defect -- a clearly material fact -- at the time of sale or after purchase. Further, Samsung has failed to institute a proper recall for the Samsung Televisions, amend the warranties, and/or reimburse customers for the cost of repairing or replacing the Samsung Televisions. As a result of this wrongful and deceptive conduct, Samsung has improperly passed the expense of repairing or replacing the defective Samsung Televisions along to Plaintiffs and the other members of the Class who purchased the defective Samsung Televisions.

8. Samsung's Televisions do not meet the expected lifespan it internally projects for the Samsung Televisions, or that it presents to its customers. For example, in response to a consumer question regarding the lifespan of a Samsung plasma Television on Samsung's website, Samsung states that "the **Samsung Plasma TVs will offer a life span of up to 100,000 hours** under optimal conditions."¹ Similarly, with respect to LCD

¹See <http://answers.us.samsung.com/answers/7463/product/PN42C450B1D/samsung-42-class-450-series-720p-plasma-hdtv-questions-answers/questions/htm> (last visited on September 15, 2010) (attached as Exhibit A hereto).

Samsung Televisions, Samsung represents in the question and answer portion of its website that “the average LCD life span is measured in hours and is usually in the tens of thousands of hours.”²

9. Samsung, however, does not inform consumers that the Samsung Televisions suffer from a common design defect that causes them to exhibit prematurely (and permanently) the TV Problem and fail well before the expected useful life Samsung itself promotes for its Samsung Televisions. Samsung has actively concealed this widespread defect from Plaintiffs and the other members of the Class. Had Plaintiffs and the other members of the Class known of this design defect, they would not have purchased their Samsung Televisions.

10. As a result of the facts alleged herein, Samsung has violated the laws governing, *inter alia*, breach of the implied warranty of merchantability and consumer fraud.

THE PARTIES

11. Plaintiff Luke Stewart is a resident of Mill Hill, Pennsylvania and a citizen of Pennsylvania. In November 2008, Plaintiff Stewart purchased a 40 inch Samsung LN-T40538 LCD Television from Sears.

² See <http://answers.us.samsung.com/answers/7463/category/02010100/lcd-tv-questions-answers/questions.htm> (last visited on September 21, 2010) (attached as Exhibit B hereto).

After owning his Television for approximately a year and a half, Plaintiff Stewart's Television would fail to turn on when prompted and instead emit a clicking noise for several moments until the Television turned on. The delay from the time Plaintiff Stewart pressed the power button on the Television until the time the Television turned on increased in the subsequent months to the point at which the Television would emit the clicking noise and fail to turn on for over an hour before a picture would appear on the screen. As a result of the TV Problem, Plaintiff Stewart has been injured.

12. Plaintiff Roger Bailey is a resident of Hallandale, Florida and a citizen of Florida. On May 25, 2006, Plaintiff Bailey purchased a 46 inch Samsung HLR4667W Widescreen Digital Light Processing HDTV for \$1,746.63. In January 2010, Plaintiff Bailey's Samsung Television would not start when prompted and instead emit a clicking sound. When the screen did power on, nothing but horizontal lines appeared on the screen. After unplugging the Samsung Television several times, the Samsung Television operated for a short period of time before the Television made a loud clicking noise and powered down without prompt. In the subsequent months, Plaintiff's Samsung Television took longer and longer to power on, and would continue to power off without prompt after approximately one half hour of viewing. Plaintiff informed Samsung of the problem with his

Television in February 2010, and Samsung told him that the Television needed servicing, but was out-of-warranty so Samsung would not help him. As a result of the TV Problem, Plaintiff Bailey has been injured.

13. Plaintiff Bunrath Math is a resident of Upper Darby, Pennsylvania and a citizen of Pennsylvania. In October 2008, Plaintiff purchased a 40 inch Samsung LN40A550 LCD Television from Amazon.com for \$998.99. Beginning in September 2009, Plaintiff Math's Samsung Television began to experience a delay when he attempted to turn it on. This problem became progressively worse in the following months, and Plaintiff's Samsung Television also began to shut off without prompt. As the Television attempted to turn on, it would emit a clicking noise until Plaintiff Math unplugged his Samsung Television. Eventually, the Television would fail to turn on entirely. Plaintiff Math called Samsung's customer service line three times to complain, but Samsung did not resolve the problem. As a result of the TV Problem, Plaintiff Math has been injured.

14. Defendant Samsung is a New York corporation, with its principal place of business at 105 Challenger Road, Ridgefield Park, New Jersey 07660. Samsung imports, manufactures, and/or distributes consumer electronic products, including the Samsung Televisions containing the TV Problem forming the subject matter of this action, which it caused to be

placed into the stream of commerce in this District and throughout the United States.

VENUE AND JURISDICTION

15. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1332 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states. Plaintiffs have located thousands of complaints regarding the Samsung Televisions on the internet, and the Samsung Televisions range in price from \$250 to \$3800. In addition, the Plaintiffs are all citizens of states different from the Defendant. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

16. Venue is proper in this District because Samsung resides in this District and conducts substantial business in this District, including the promotion, sale and marketing of its products, sufficient to render all of them within the jurisdiction of this Court. The events and conduct giving rise to the violations of law in this action constitute interstate commerce, and a significant portion thereof occurred in this District.

17. This Court has personal jurisdiction over Samsung because it is a citizen of this state.

SUBSTANTIVE ALLEGATIONS

18. The Samsung Televisions are sold nationwide at large chain stores, such as Sears and Best Buy, other retail stores, wholesale clubs, such as Sam's Club and Costco, and Internet-based appliance vendors. The average retail price for the Samsung Televisions ranges between \$250 and \$3,800, depending on the model.

19. Samsung's website touts the long life span of the Samsung Televisions. In a section of the Samsung website entitled, "CUSTOMER QUESTIONS & ANSWERS," Samsung represents that:

Samsung Plasma TVs will offer a life span of up to 100,000 hours under optimal conditions

See Ex. A hereto.

20. Similarly, with respect to LCD Samsung Televisions, Samsung represents in the "CUSTOMER QUESTIONS & ANSWERS," portion of its website that:

the average LCD life span is measured in hours and is usually in the **tens of thousands of hours**.

See Ex. B hereto.

21. Consumers paying up to \$3,800 for a Samsung Television could reasonably expect their Samsung Television to function well beyond the one year labor/one year parts warranty extended by Samsung's boiler-plate warranties.

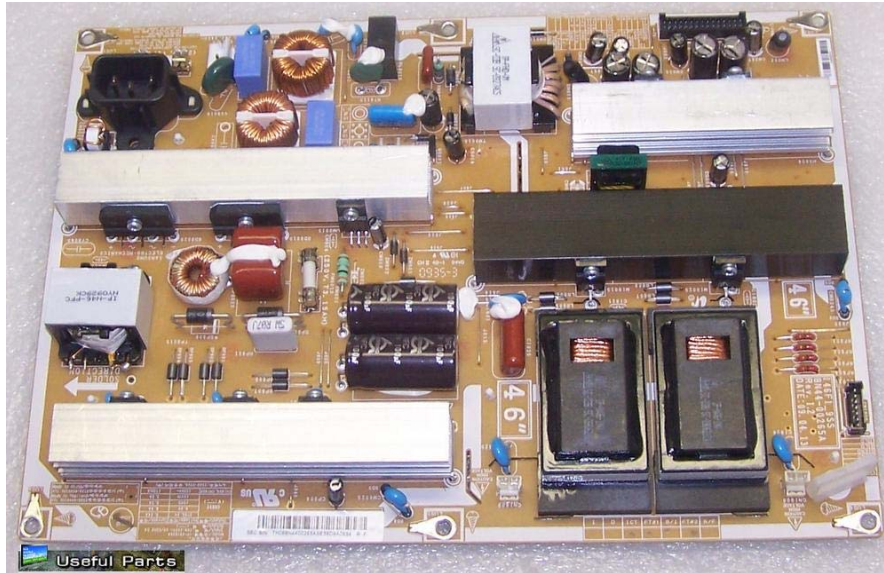
22. As set forth below, as a result of the design defect in the Samsung Televisions, the Samsung Televisions fail to operate shortly after the expiration of the one year labor/one year parts warranty extended by Samsung's boiler-plate warranties.

Background - Flat Screen TVs and Capacitors

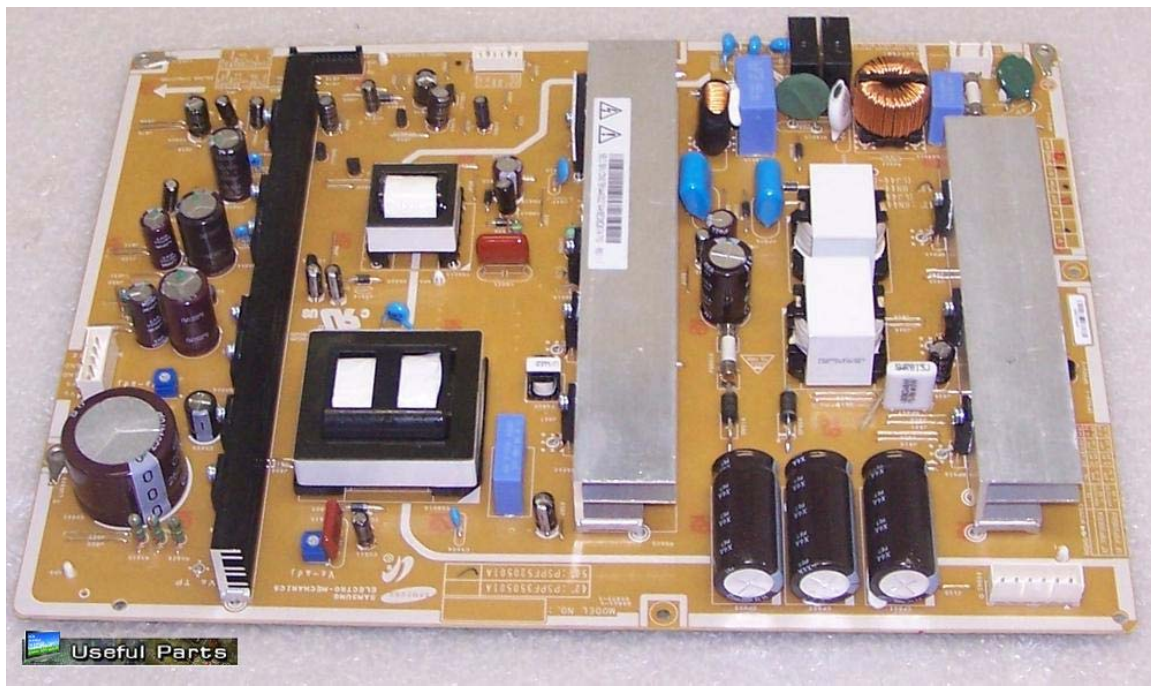
23. Plasma, LCD and DLP Samsung Televisions, like almost all Samsung Televisions, contain a number of internal electronic components. These electronic components are mounted on circuit boards and serve dedicated functions, *i.e.*, enabling the television to power on and off, tune to a particular channel, display visual images properly, and replay audio.

24. The power supply boards ("PSB") on these televisions, including the Samsung Televisions, control power regulation and distribution.

25. The image below is the PSB for a Samsung LN46500P3FXZA LCD TV:



26. The image below is the PSB for a Samsung PN50B53052F Television:



27. The following depicts the PSB for a Samsung DLP HRL4667W Television:

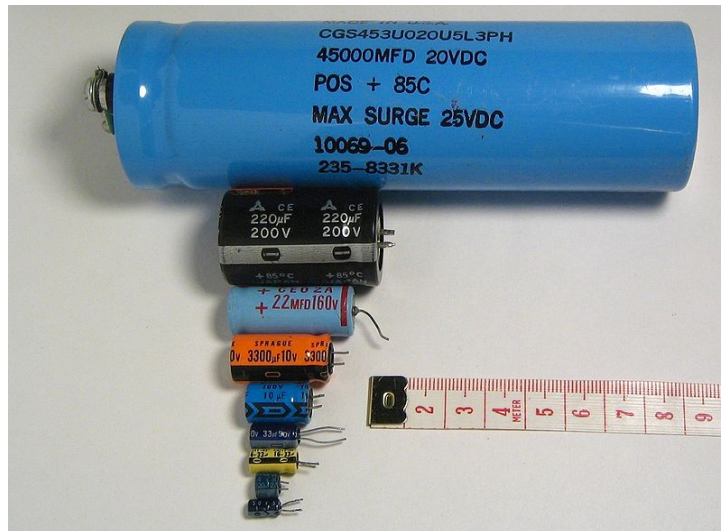


28. The PSBs in the Samsung Televisions contain capacitors, which store electrical charges. A typical capacitor is comprised of two conductors separated by a dielectric (non-conducting substance) such as air, glass, or paper. These conductors are usually referred to as plates, regardless of their actual shape.

29. Capacitors function as energy storage centers. Their storage ability allows capacitors to help smooth voltage spikes that are caused by lightning or electrical switches opening and closing, thus allowing a steady current to be supplied to circuits inside a television. This ability helps prevent electronics from being destroyed.

30. The life of an electrolytic capacitor can be shortened by a number of occurrences, including overvoltage (*i.e.*, if the specified voltage is exceeded) or heat.

31. The picture below depicts the types of capacitors – electrolytic capacitors – commonly used in Samsung Televisions.



The Samsung Televisions Are Defectively Designed

32. Capacitors are integral and necessary parts of the electronic circuit boards within the Samsung Televisions and were designed to operate within a defined temperature and voltage range and for a certain period of time before ceasing to operate. A television with a capacitor rated 1,000 hours on its power supply board, for instance, could last approximately one year before failing.

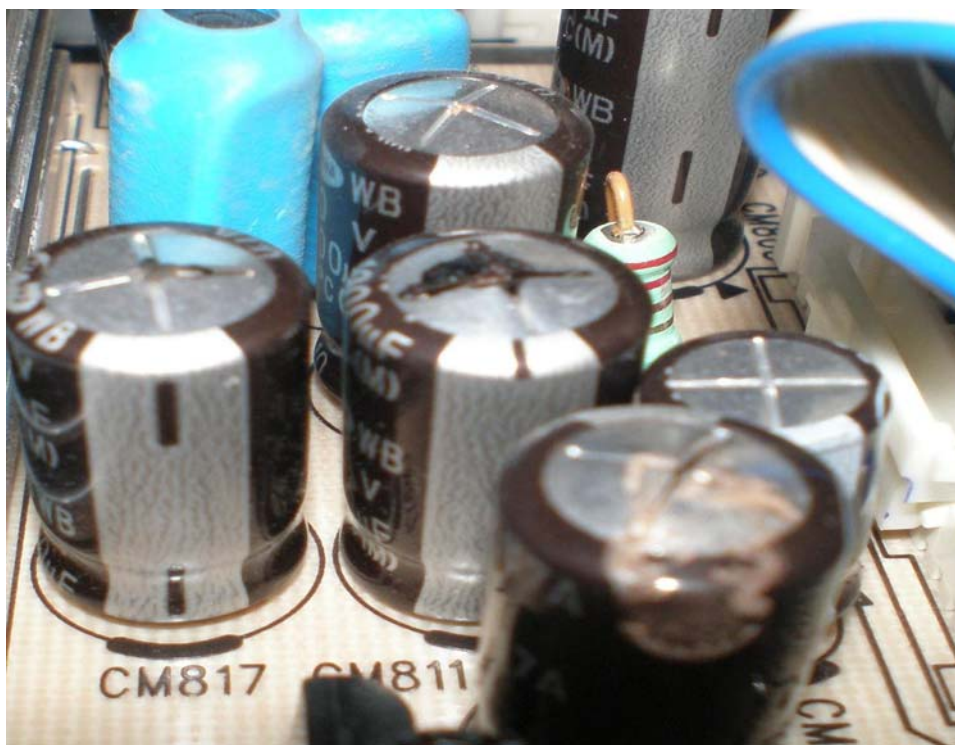
33. However, if the wrong capacitors are used for the given application, *i.e.*, they are exposed to a higher amount of heat or voltage than they were designed to withstand, the life span of the capacitors will be severely diminished. According to one engineer, a good rule of thumb is that every 10 degree Celsius over 85 degrees will cut the life expectancy of an electrolytic capacitor in half.

34. Thus, when the capacitors on the PSB overheat, they can no longer relay signals properly and thereby cause the PSB to function improperly. This causes the Samsung Televisions to fail to start when prompted and/or automatically shut down. When this happens the Samsung Television owner hears a series of clicking noises as the Samsung Television attempts to turn on, and the red light on the bottom panel of the front of the Television blinks on and off.

35. As a temporary fix, some Samsung Television owners and members of the putative Class have been able to resume use of their Samsung Televisions temporarily by unplugging the unit, waiting 20-30 seconds for the capacitors to cool, and then plugging it back in. However, this “fix” soon fails as the capacitors eventually burn out and the Samsung Televisions completely fail to operate.

36. The Samsung Televisions suffer from a design defect because normal operation and usage of the Samsung Televisions exposes the capacitors that are found on the Samsung Televisions' PSBs to excessive heat and/or excessive voltage, which, in turn, causes the capacitors to fail. The failure of the capacitors causes the PSBs to malfunction and, therefore, causes the Samsung Televisions to exhibit the TV Problem.

37. The figure below depicts defective capacitors for a Samsung LCD TV LE40R73BD:



38. Purchasers of the Samsung Televisions have paid and continue to incur substantial parts and labor fees to repair their defectively designed

Samsung Televisions when they fail to operate as a result of the design defect after the expiration of the one year warranty for parts and labor. If the electronic components contained on the PSBs in the Samsung Televisions fail after the first year of purchase, Samsung refers consumers to independent repair facilities. Upon information and belief, during the Class Period, it costs approximately \$110 to \$150 for a service technician to perform a diagnostic on a Samsung Television and an additional \$70 to \$90 for every hour of service repair performed.

**Consumer Complaints Concerning
The Defective Samsung Televisions**

39. As a result of the design defect in the Samsung Televisions, purchasers of these Samsung Televisions have experienced the TV Problem, as evidenced by the numerous complaints found on the Internet.

40. Class members have complained that their Samsung Televisions have failed to operate during normal usage. Relevant excerpts from a sampling of these complaints are set forth below:

Source	Complaint
My3Cents.com posted on 11/10/2009	Buyer Beware! We have a 2 year old model of this company's 46" LCD HDTV. It was represented as being one of the best on the market at the time of purchase for \$3500.00. This set lost its picture and has been diagnosed with a major \$850 component that has gone out. We have been told by our service technician that he is seeing this more often on this product. From what I am gathering,

	<p>the reputation of Samsung is not as good as we had been led to believe. I would give serious consideration to purchasing anything other than a Samsung product if I were a buyer. I know we will not be purchasing anything else with this name. Bad product, poor public relations!</p>
<p>Consumeraffairs.com posted on 2/20/2009</p>	<p>On 01/26/2009, I watched my 52 LCD Samsung TV and it was working perfectly. The next morning, on 01/27/2009, when I tried to turn the TV on, the power light started blinking. The melody would play, and I could tell that the TV turned on, but the screen was completely black. The power light kept blinking, and after about 2 seconds the TV would turn off by itself. If I leave it plugged in, it will keep cycling (on and off by itself, with nothing showing on the screen).</p> <p>Since the 28th, I have been trying to get Samsung to send someone over to fix the problem. All they do is pass the problem to some other people, who call me asking what happened to the TV, make appointments, and never come. One even said that it's too hard to park in my area, that I'd have to call Samsung back to get them to schedule someone else. I feel like no one cares about this. The item was too expensive, and Samsung just doesn't care!</p> <p>I paid \$2,500 for this TV, and I have been waiting for almost a month to get someone to come fix it.</p>
<p>Cnet.com posted on 7/1/09</p>	<p>Samsung: LNT4665f on & off cycling. TV is 2 1/2 years old. Started out with one on cycle, then two cycles, now three cycles to start. Is it an option to rebuild the power supply capacitors to fix this issue? I also think Samsung should have addressed this problem long before now</p>
<p>My3Cents.com posted on 11/2/2009</p>	<p>Never Buy A LCD Samsung TV - LN-T5265F. For about 9 months, everything was OK with my big new HDTV. Then I began to get sound but no picture. Samsung technician blamed it on the cable company. Cable company proved it was a Samsung</p>

	<p>problem. Samsung technician replaced the whole innards. The technician's service was terrible, but the new parts did work....at least for the next 9 months, then the problem resurfaced. We have to turn the TV on and off for about 10 times before we see a picture. I should have bought that store warranty. Now, 20 times turning it on and off won't work. I WILL GIVE THE TV AWAY TO ANYONE WHO IS WILLING TO HAUL IT AWAY FREE. It is football season and I am tired of watching games on my small kitchen TV since the Samsung rarely works on weekends!</p>
<p>Consumeraffairs.com posted on 2/17/2009</p>	<p>I have a Samsung SP-R4232 Plasma TV. I have had this unit since December 2005. It has been well cared for. On Saturday Feb.14, 2009 the power supply went out and the tv no longer functions. I contacted Samsung directly over the phone and they said because the tv is 2 months pass the warranty date that there was nothing they could do for me except refer me to a repair service in my area.</p> <p>I paid \$2200 for this unit at Fry's Electronics in 2005. I purchased this product based on product reputation and quality. I expected this tv to last at least as long as my old analog set. This product should have lasted more than 3 years and 2 months for the price I paid. I am really disappointed with Samsungs lack of concern. They have all this money and I am left with a useless product. Where is the justice in that.</p>
<p>Consumeraffairs.com posted on 11/18/2008</p>	<p>Just like everyone else, bought a plasma tv from circuit city on 18 month same as cash. Before the first payment was made and after the 1 year warranty expired the power board went out. I will never buy a Samsung or from Circuit City again.</p>

	\$350 to start, if that fixes the problem.
http://forums.anandtech.com/showthread.php?p=29185031 posted on 12/15/2009.	<p>So I have Samsung LN4061 that I bought in 2007. I noticed recently that that it's taking longer and longer to turn on after I hit the power button, whether it be the remote or TV power button. Sometimes there are anomalies on the screen, pink and green snowy effect. A quick turn off and turn on usually fixes it until the next time.</p> <p>So I started doing some research on this problem through Google and found that this phenomenon happens all the time to Samsung LCD TVs made from 2004 to 2008. It appears that the caps they used, there are 5 of them it seems, are under powered for the power supply. And they start to bulge and burst just like they do on motherboards. I see that most places want around \$400.00 to \$500.00 to replace these caps. It looks like Samsung decided to use 10 w when the power supply requires 12 at a minimum. They last around 2 years before bulging and bursting. And the TV will not turn on eventually.</p> <p>It looks like if you can solder, you can fix it yourself by buying new caps for around \$5.00 and a soldering gun for around \$20.00. Takes about an hour and it fixes the problem.</p> <p>I'm curious, how is your Samsung TV and has this happened to you? Samsung refuses to have a recall of course or even acknowledge that there is a problem.....</p>
Consumeraffairs.com posted on September 9, 2010	<p>We purchased a DPL tv four years ago at a cost of \$2000. We purchased a name brand at a higher cost assuming we would get a good product. The tv now turns itself on 5-6 times before it will usually stay on. We contacted a service rep for samsung via the internet and was told that this has</p>

	not been a common complaint. (However, I have read many posts on websites stating the same problem.) Now the dilemma: do we go for service which has not seemed to help people or do we cut our losses? I have read about possible lawsuits, if so, we want in. This is a very frustrating situation.
Consumeraffairs.com posted on July 29, 2010	Bought tv maybe 3 years 57 inch DLP with stand over 2,400 dollars, called Samsung about brightness failing they said it was the lamp. so i replaced it. Now tv keeps shutting off by itself. I turn it back on 5 min later, then the tv shuts off again. Took it to a repair shop. Samsung recommended they can't tell me what the problem was. 90 dollars later they just cleaned it out. Took it back home worked for 2 days and the same thing happened. I'm out of work and can barely pay.
Consumeraffairs.com posted on August 16, 2010	I, like most people on this forum, purchased a Samsung LCD flatscreen television (model LNS4041DX/XAA) in 2006 and I am now experiencing a clicking noise and the TV will not turn on. I did my research and determined that this was a capacitor issue. It appears that Samsung has used cheap capacitors that blowout or melt causing the TV to lose the ability to power on. After calling their customer service department, I was told that there are certain models where Samsung will have someone come out and fix the issue at no cost. However, my model is not listed. I escalated the issue to the Executive Customer Relation department and was told the exact same thing. I asked the rep if my symptoms are the same as the models that receive the repair and she agreed. I then confirmed with the rep, Kim, that Samsung was "unwilling" to help me and she said this was correct. I assume that these calls are recorded so this can be verified.

	I find it disappointing that Samsung will not budge on this when they obviously have a serious issue on their hands. I will fix the TV myself and will NEVER buy another Samsung product.
Consumeraffairs.com posted on November 19, 2009	Purchased 42" Samsung HP T-4254 less than 2 years ago. In the last 2 weeks the TV began cycling through an on/off clicking. When doing so we could not watch the TV. I contacted Samsung today and had extensive on-line chat primarily because I wanted a transcript of our conversation. They were unable to provide a solution other than me filling out a trouble ticket. I did receive an address to their the Executive Customer Relations Department. I will now be contacting them.
Consumeraffairs.com posted on September 3, 2009	I have a less than 2 year old 46 " LCD HDTV from Samsung and have the same issues with it not turning on, turns off & on, has pink dots all over the screen, seems like every day its getting worse. I did a lot of research and found that there are hundreds of people out there complaining about the same problem, and that samsung has not taken responsibility for the many similar issues. I just want to know if we are all complaining and are experiencing the same problems, why isn't anybody doing anything about it? I am disappointed & exhausted from reading that these problems are not addressed when you call samsung customer service, so you know what? I will not even bother if I will get the run-a-round like the rest of them. I will just simply not buy another samsung tv. I am simply hoping that enough people have complained to warrant some action. I saved my money for a very long time to purchase this 46" beauty and cannot afford to purchase another one.

(Emphasis added, edited for readability purposes).

Samsung Has Known Of The Design Defect Since 2004 But Has Failed To Accept Full Financial Responsibility

41. Samsung has known of the design defect in the Samsung Televisions since as early as 2004, but has failed to recall the Samsung Televisions publicly in order to cure the design defect described herein.

42. Samsung's actual knowledge of the defective Samsung Televisions is demonstrated by the numerous complaints described above, and as set forth below.

**Samsung Has Known of the Defective Samsung Televisions
as a Result of Its Design and Testing of the Samsung Televisions**

43. Samsung has known of the defect in the Samsung Televisions as a result of its design and testing of the Samsung Televisions, during which Samsung became aware that the capacitors on the Samsung Televisions' PSBs were unsuitable for the temperatures and/or voltages they would be exposed to during normal operation and that the capacitors, and in turn the PSBs, would fail well before the useful life of the Samsung Televisions had been reached.

44. Samsung knew that they could have designed the Samsung Televisions to contain PSBs that withstand the demands of normal use and/or contain capacitors that operate at high temperatures, at high voltages and/or for longer hours, but chose not to.

Samsung Admits to Knowing About the TV Problem through the Issuance of a Silent Recall

45. Moreover, Samsung has admitted that at least some of the Samsung Televisions contain faulty capacitors by providing out-of-warranty repairs to the owners of certain Television models that contact Samsung about the TV Problem. According to numerous members of the putative Class, when certain owners of the Samsung Televisions have complained loud enough and long enough to Samsung's customer support representatives, the Samsung representatives have admitted that the capacitor issue is a known problem and, in certain instances, that Samsung would fix Samsung Televisions with bad capacitors for free even if the Television was out-of-warranty. This effort by Samsung to address the "squeaky wheel" in a limited number of instances is wholly inadequate to make Class members whole.

Samsung Was Aware of Widespread Problems with Low Quality Capacitors from Trade Publication Articles.

46. Problems with faulty, low quality capacitors – particularly those manufactured in Taiwan – have been well-known since the early 2000's. Beginning in late 2001, a number of online newsgroups and industry publications started reporting a large number of early failures of electrolytic

capacitors manufactured in Taiwan. The problems became known as the “capacitor plague.”

47. One rumored cause of the capacitor plague was botched industrial espionage. Reportedly, the employee of a Japanese manufacturer stole the formula for an electrolyte from his employer in Japan and sold it to Taiwanese electrolyte manufacturers. Unfortunately, the formula as sold was incomplete and a critical component of the electrolyte was missing, causing unintended chemical reactions resulting in the build-up of hydrogen gas.

48. By 2004, researchers at the University of Maryland had zeroed in on causes of the Taiwanese capacitor plague. See Craig Hillman and Norman Helmold, *Identification of Missing or Insufficient Electrolyte Constituents in Failed Aluminum Electrolytic Capacitors*, available at: http://www.dfrsolutions.com/pdfs/2004_Electrolyte_Hillman-Helmold.pdf.

49. Samsung knew or should have known about these capacitor problems but, nevertheless, manufactured, sold, and distributed the Samsung Televisions with defective capacitors and PSBs without disclosing this known problem.

Despite its Knowledge of the Television Defect
Samsung Refuses To Inform Purchasers About The Design Defect

50. Despite the thousands of complaints that Samsung received from its customers about the Samsung Televisions, and offering to provide out-of-warranty repairs to certain customers whose Samsung Televisions suffered from the TV Problem, Samsung has neither informed purchasers of the Samsung Televisions of the existence of the design defect at the point of sale or thereafter, nor did it publicly recall the Samsung Televisions. Samsung never revealed the existence of the defect on its websites or marketing materials, where it touts the characteristics of the Samsung Televisions. Indeed, Samsung has refused to take any action other than the silent recall to protect Class members from the design defect.

51. The defect described herein was a material fact related to the reliability and normal operation of the Samsung Televisions known only to Samsung. Had Plaintiffs and members of the Class known about the defect, they would not have purchased their Samsung Televisions.

52. In cases where the PSBs failed after the one year warranties for the Samsung Televisions expire, Samsung has caused Class members to incur hundreds of dollars of parts, service, and labor fees to have their defective PSBs within the Samsung Televisions replaced. Samsung's wrongful acts have caused Plaintiffs and members of the Class to incur

ascertainable losses in the cost of repair and loss of use and value of their Samsung Televisions.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this action both individually and as a class action pursuant to FED. R. CIV. P. 23(a), 23(b)(2), and 23(b)(3) against Samsung, on their own behalf and on the behalf of the following Class:

All consumers in the United States that purchased one or more of the Samsung Televisions during the Class Period.

54. Members of the Class are so numerous that joinder of all members would be impracticable. Plaintiffs estimate that there are thousands of members of the Class.

55. There are questions of law and fact common to all the members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether the Samsung Televisions are defectively designed;
- b. Whether Samsung knew, or was reckless in not knowing, that the Samsung Televisions were defectively designed at the times that it sold the Samsung Televisions to Class members; and
- c. Whether as a result of Samsung's misconduct, Plaintiffs and other Class members are entitled to damages, restitution,

equitable relief, injunctive relief, or other relief, and the amount and nature of such relief.

56. The claims of Plaintiffs are typical of the claims of the members of the Class. Plaintiffs have no interests antagonistic to those of the Class, and Samsung has no defenses unique to the individual Plaintiffs.

57. Plaintiffs will fairly and adequately protect the interests of the Class and have retained attorneys experienced in class and complex litigation.

58. A class action is superior to all other available methods for this controversy because: i) the prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; ii) the prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for Samsung; iii) Samsung acted or refused to act on grounds generally applicable to the Class; and iv) questions of law and fact common to members of the Class predominate over any questions affecting only

individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

59. Plaintiffs do not anticipate any difficulty in the management of this litigation.

60. Samsung has acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

APPLICATION OF NEW JERSEY LAW

61. Plaintiffs, on behalf of themselves and all others similarly situated, seek the application of New Jersey law to all of the claims asserted on behalf of the nationwide Class.

62. The application of New Jersey law is appropriate because the deceptive and unlawful conduct that forms the basis of Plaintiffs' claims emanates from New Jersey, where Samsung has its principal place of business. New Jersey has significant contacts and/or a significant aggregation of contacts to claims asserted in this litigation, thereby creating compelling state interests that ensure that the choice of New Jersey law on an extra-territorial basis is appropriate in this case. The majority of Samsung officers are located in New Jersey and Samsung's marketing and

advertising efforts were likely created in and orchestrated from the location of its present headquarters in New Jersey.

63. New Jersey has a materially greater interest than any other State in regulating unlawful conduct by Samsung and in enforcing the rights and remedies granted to United States consumers, including New Jersey residents, under the New Jersey laws invoked by this Class Action Complaint. These rights and remedies further strong fundamental public policies of the State of New Jersey.

TOLLING OF THE STATUTES OF LIMITATIONS

64. The causes of action alleged herein accrued upon discovery of the latently defective nature of the Samsung Televisions. Because the defect alleged herein is latent and because Samsung took steps to conceal the true character, nature, and quality of the Samsung Televisions, among other reasons, Plaintiffs and other members of the Class did not discover and could not have discovered the problems and defects alleged herein through the exercise of reasonable diligence.

65. Any applicable statutes of limitations have been tolled by Samsung's knowing and active concealment and denial of the facts as alleged herein. Plaintiffs and the other members of the Class have been kept ignorant of vital information essential to the pursuit of these claims, without

any fault or lack of diligence on their parts. Plaintiffs and Class members could not reasonably have discovered the defects and problems alleged herein because of Samsung's fraudulent concealment.

66. Samsung was and is under a continuous duty to disclose to Plaintiffs and the other members of the Class the true character, quality, and nature of the Samsung Televisions. Samsung knowingly, affirmatively, and/or actively concealed, and continues to conceal, the true character, quality and nature of the Samsung Televisions.

67. Samsung knew or should have known that Plaintiffs and the other Class members would reasonably rely on Samsung's knowing, affirmative, and/or active concealment. Based on the foregoing, Samsung is estopped from relying on any statutes of limitations in defense of this action.

COUNT I

(By All Plaintiffs, Individually, And On Behalf Of All Members Of The Class In All 50 States Who Purchased A New Samsung Television During the Class Period Against Samsung For Violations Of The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, et seq.)

68. Plaintiffs hereby repeat and reallege the preceding paragraphs as if fully set forth herein.

69. This count is brought against Samsung, pursuant to the New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, et seq.

70. At all times relevant herein, New Jersey's Consumer Fraud Act was in effect. The Act prohibits any "[f]raud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice."

71. Further, the Act prohibits any "knowing, concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission in connection with the sale ... of any merchandise" N.J. Stat. Ann. § 56:8-2.

72. Plaintiffs and Class members reasonably expected their Samsung Televisions to last well beyond the one-year warranty. Samsung represents that its plasma Samsung Televisions will have a useful life of up to 100,000 hours of viewing, and that its LCD Samsung Televisions will have a useful life of tens of thousands of hours.

73. At all times during the Class Period, Samsung developed, manufactured, marketed and sold the Samsung Televisions.

74. The Samsung Televisions are defective because normal operation and usage of the Samsung Televisions exposes the capacitors that are found on the PSB within the Samsung Televisions to higher heat and/or voltage than which they were designed to withstand during normal operation, which, in turn, causes the capacitors on the PSB to fail and thereby causes the Television to fail.

75. Samsung had knowledge of the design defect at least as early as 2004 from pre-market testing, numerous consumer complaints and warranty claims relating to Samsung Televisions they manufactured, articles regarding faulty capacitors published and readily available throughout the industry, and as evidenced by the silent recall implemented with respect to certain Samsung Televisions.

76. Plaintiffs and Class members were not aware the Samsung Televisions were defective at the time of sale.

77. Despite Samsung's knowledge or prior notice of the defect, it omitted this material fact with the intent that Plaintiffs and Class members act upon this material omission and continued to place defective Samsung Televisions into the stream of commerce.

78. Samsung intentionally concealed information about the defect from Plaintiffs and Class members for the purpose of maximizing profit.

79. If Plaintiffs and Class members knew the Samsung Televisions were defective, they would not have purchased them because the existence of the defect was a material fact to the transaction. Samsung, at all relevant times, knew or should have known that Plaintiffs and members of the Class did not know or could not have reasonably discovered the defect prior to their purchases.

80. By paying monies for these defective Samsung Televisions, Plaintiffs and members of the Class have suffered an ascertainable loss.

81. Samsung's conduct constitutes a violation of New Jersey's Consumer Fraud Act and entitles Plaintiffs and members of the Class to relief under this statute of statutory and actual damages, injunctive relief, and attorneys' fees and costs.

COUNT II

**(By Plaintiffs, Individually And On Behalf Of All Members
Of The Class In All 50 States Who Purchased A New
Samsung Television During the Class Period Against
Samsung For Breach Of The Implied Warranty Of
Merchantability, Pursuant To N.J. Stat. § 12A: 2-314)**

82. Plaintiffs hereby repeat and reallege the preceding paragraphs as if fully set forth herein.

83. This count is brought against Samsung for breach of the implied warranty of merchantability, pursuant to N.J. Stat. § 12A: 2-314, which was in effect at all relevant times herein.

84. The Samsung Televisions are "goods" within the meaning of that term under the New Jersey statute.

85. Samsung is a "merchant" within the meaning of that term under the New Jersey statute because Samsung sells and manufactures the Samsung Televisions.

86. The Implied Warranty of Merchantability, codified under N.J. Stat. § 12A: 2-314, requires, among other things, that the Samsung Televisions pass without objection in the trade and are fit for the ordinary purposes for which the Samsung Televisions are used.

87. The Samsung Televisions are defectively designed because normal operation and usage exposes the capacitors on the Samsung Televisions' PSBs to higher heat and/or voltage than which it was designed to withstand, which, in turn, causes the PSBs to fail, and therefore, the Samsung Televisions to exhibit the TV Problem and fail.

88. As a result of the design defect described herein, the Samsung Televisions were not merchantable at the time of sale and do not function in their ordinary capacity.

89. Samsung's limits on its express warranty are unconscionable. Samsung knowingly sold a defective product without conspicuously informing consumers and concealing material information about the defect. Samsung possessed actual superior knowledge of the defect at least as early as 2004 based on pre-market testing, numerous consumer complaints and warranty claims relating to Samsung Televisions they manufactured, and articles regarding faulty capacitors known throughout the industry.

90. The time limits contained in Samsung's written limited warranties are grossly inadequate to protect the Plaintiffs and members of the Class. Among other things, Plaintiffs and members of the Class had no meaningful choice in determining those time limitations; the warranties were written by Samsung without input of the Plaintiffs or Class members; the terms of the limited warranties unreasonably favored Samsung by creating a one-year warranty limitation on a product consumers could reasonably expect to last up to 100,000 hours; a gross disparity in bargaining power existed as between Samsung and Class members; and Samsung knew or should have known that the Samsung Televisions were defective at the time of sale and would fail well before the end of their useful lives, thereby rendering the time limitations insufficient, inadequate, and unconscionable.

91. The defects in the Samsung Televisions rendered them non-merchantable because they could not be used for their ordinary purposes and thereby proximately caused the economic damages suffered by Plaintiffs and members of the Class. The amount of damages will be ascertained at trial.

COUNT III

(By Plaintiff Bailey, Individually And On Behalf Of All Members Of The Class Who Purchased New Samsung Televisions In The State Of Florida During the Class Period Against Samsung For Violations Of The Florida Deceptive And Unfair Trade Practices Act, Section 501.201, et seq., Florida Statutes (“FDUTPA”))

92. Plaintiff Bailey hereby repeats and realleges the preceding paragraphs as if fully set forth herein.

93. This count is brought against Samsung pursuant to the Florida Deceptive and Unfair Trade Practices Act, Section 501.201, et seq., Florida Statutes (“FDUTPA”).

94. At all times relevant herein, FDUTPA was in effect. FDUTPA, *inter alia*, prohibits any unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

95. Plaintiff and the other members of the Class are “consumers” as that term is defined in Fla. Stat. § 501.203(7).

96. Plaintiff and the other members of the Class are “persons” as that term is used in Fla. Stat. § 501.211, and as that term is defined in Fla. Stat. § 1.01(3).

97. Plaintiff and similarly situated Class members reasonably expected their Samsung Televisions to last well beyond the one-year

warranty. Samsung represents that plasma Samsung Televisions should last up to 100,000 hours of viewing and LCD Samsung Televisions should last for tens of thousands of hours.

98. Samsung developed, manufactured, marketed and sold the Samsung Televisions. The Samsung Televisions are defective because normal operation and usage of the Samsung Televisions exposes the capacitors that are found on the Samsung Televisions' PSBs to higher heat and/or voltage than which they were designed to withstand during normal operation, which, in turn, causes the capacitors on the PSBs to fail and thereby causes the Samsung Televisions to exhibit the TV Problem and fail.

99. Samsung knew of the design defect at all relevant times as a result of numerous consumer complaints and warranty claims relating to the TV Problem as well as its design and testing the Samsung Televisions.

100. Samsung failed to disclose to Plaintiff and members of the Class the material fact that the Samsung Televisions were defective and would prematurely fail. Samsung's failure to disclose this information constituted a violation of FDUTPA.

101. Moreover, had Plaintiff and Class members known the Samsung Televisions were defective, they would not have purchased them, because the existence of the defect was a material fact to the transaction.

Samsung, at all relevant times, knew or should have known that Plaintiff and members of the Class did not know or could not have reasonably discovered the defect prior to their purchases.

102. By paying monies for these defective Samsung Televisions, Plaintiff and members of the Class have suffered an ascertainable loss.

103. Samsung's violation of FDUTPA entitles Plaintiff and members of the Class to statutory and actual damages, injunctive relief, and attorneys' fees and costs.

COUNT IV

**(By Plaintiffs Math and Stewart, Individually, And On Behalf
Of All Members Of The Class Who Purchased A New Samsung
Television In The State Of Pennsylvania During the Class Period
Against Samsung For Breach Of The Implied Warranty Of
Merchantability, Pursuant To 13 Pa. Cons. Stat. § 2314, et seq.)**

104. Plaintiffs Math and Stewart hereby repeat and reallege the preceding paragraphs as if fully set forth herein.

105. This count is brought against Samsung for breach of the Implied Warranty of Merchantability, pursuant to 13 Pa. Cons. Stat. § 2314, et seq., which was in effect at all relevant times herein and requires, among other things, that the Samsung Televisions pass without objection in the trade and are fit for the ordinary purposes for which the Samsung Televisions are used.

106. The Samsung Televisions are “goods” within the meaning of the Pennsylvania statute.

107. Samsung is a “merchant” within the meaning of the Pennsylvania statute.

108. The Samsung Televisions are defectively designed because normal operation and usage of the television set exposes the capacitors on the PSBs in the Samsung Televisions to higher heat and/or voltage than which they were designed to withstand, which, in turn, causes the PSBs to fail and shut down, and therefore, the Samsung Televisions to fail.

109. As a result of the design defect described herein, the Samsung Televisions were not merchantable at the time of sale and do not function in their ordinary capacity.

110. The time limits contained in Samsung’s written limited warranties are grossly inadequate to protect the Plaintiffs and members of the Class. Among other things, Plaintiffs and members of the Class had no meaningful choice in determining those time limitations; the warranties were written by Samsung, without input of the Plaintiffs or Class members; the terms of the limited warranties unreasonably favored Samsung by creating a one-year warranty limitation on a product consumers could reasonably expect to last over 100,000 hours; a gross disparity in bargaining power

existed between Samsung and Class members; and Samsung knew or should have known that the Samsung Televisions were defective at the time of sale and would fail well before the end of their useful lives, thereby rendering the time limitations insufficient, inadequate, and unconscionable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- a. Certify this action as a class action under Rule 23 of the Federal Rules of Civil Procedure, appoint the named Plaintiffs as Class representatives, and appoint the undersigned as class counsel;
- b. Order Samsung to pay Plaintiffs and other members of the Class an amount of actual and statutory damages, restitution and punitive damages in an amount to be determined at trial;
- c. Issue an injunction or other appropriate equitable relief requiring Samsung to recall or otherwise adequately repair the defective Samsung Televisions, and/or extend the warranty period to a reasonable period of time;
- d. Issue an injunction preventing Samsung from continuing to manufacture and sell the Samsung Televisions without disclosing or fixing the design defect and TV Problem;

- e. Issue an order granting Plaintiffs' reasonable costs and attorney's fees; and
- f. Grant such other relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

Dated: October 4, 2010

By: 

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